

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:09CR3075
)	
v.)	
)	
JULIO RODOLFO LOPEZ,)	<i>SUA SPONTE</i> ORDER ON NOTICE OF
)	APPEAL
Defendant.)	
_____)	

The defendant filed his Notice of Appeal of Final Sentence Pursuant to 18 § 3742, filing 29, on December 6, 2010. The judgment imposing a sentence was entered September 1, 2009, one year and three months before the filing of the notice of appeal.

Rule 4(b)(1)(A) of the Rules of Appellate Procedure says:

In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

- (i) the entry of either the judgment or the order being appealed; or
- (ii) the filing of the government's notice of appeal.

The government has filed no notice of appeal. Since the filing of the notice of appeal by the defendant was done more than 14 days after the judgment that set the sentence, the filing by the defendant was untimely, unless he is entitled to an extension of time.

The only provision for an extension of time is by Rule 4(b)(4), as follows:

Upon a finding of excusable neglect or good cause, the district court may—before or after the time has expired, with or without motion and notice—extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b). (Emphasis added).

If I could find “excusable neglect or good cause” to extend the period for appeals, I could not extend it more than 30 days from the expiration of the time set out in Rule 4(b), or a total of 44 days after the entry of the judgment. The 44 days expired many months ago.

IT IS ORDERED that the Notice of Appeal of Final Sentence Pursuant to 18 § 3742, filing 29, is untimely and therefore invalid. No further action shall be taken by the clerk of the court without further order.

Dated December 14, 2010.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge